

### REMARKS/ARGUMENTS

Claims 1-10, 17-22 and 78-79 are active. Pages 5 and 22 of the specification have been amended for consistency with the numbering in SEQ ID NO: 26. The correspondence between SEQ ID NO: 26 (Stoffel fragment numbering) and the previously used *Taq* polymerase numbering is disclosed on page 5, second full paragraph. Page 38 of the specification has been revised as suggested by the Examiner.

Claims 9 and 10 were previously withdrawn, but have been amended to fall within the elected subject matter (SEQ ID NO: 37 encodes a polypeptide having the M484V mutation, SEQ ID NO: 38 encompasses the M484V mutation. Accordingly, the Applicants respectfully request rejoinder of these claims. Claims 11-16 and 23-77 have been withdrawn from consideration.

The claims have been revised to replace the term “purified” with the word “isolated”. Descriptive support for this change is found on page 24, last line, of the specification. Independent Claim 1 and Claim 19 have been revised to require the elected species of mutation at position 484 of SEQ ID NO: 26. The M484 mutation corresponds to the M761 mutation in the *Taq* polymerase (specification, page 5, line 10). The % homology and stringency conditions in Claims 1 and 19 find support on page 27, line 5 and last line. Support for the amendment of Claim 78 is found on pages 32-33 of the specification. No new matter is believed to have been added. Favorable consideration and allowance of this application is respectfully requested.

### Restriction/Election

The Applicants previously elected with traverse Group I, claims 1-22, 78 and 79; the mutation M484 (mutation of the methionine residue at 484 of SEQ ID NO: 26 which

corresponds to the mutation of residue 761 in the Taq polymerase) and the sequence depicted by SEQ ID NOS: 19 and 20. This requirement has now been made FINAL.

Objection—Specification

The specification was objected to as not properly identifying a trademark. This objection is now moot.

Rejection—35 U.S.C. §101

Claims 1-8 and 17-19 were rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter, such as naturally occurring proteins. This rejection is moot in view of the amendments above.

Rejection—35 U.S.C. §112

Claims 78-79 were rejected under 35 U.S.C. 112, first paragraph, as lacking adequate written descriptive support for inserts of the deposited phage strains I-3168 through I-3176. This rejection may be withdrawn in view of the deposit of these strains under the Budapest Treaty and in view of the statement regarding removal of restrictions on access below. Accordingly, the Applicants respectfully request that this rejection be withdrawn.

Statement on Access for Biological Deposit(s)

The phage strains I-3168 through I-3176 were deposited under the terms of the Budapest Treaty at CNCM on February 27, 2004. These microorganisms were deposited under the terms of the Budapest Treaty. As required by 37 C.F.R. 1.808, subject to the one exception permitted by 37 C.F.R. 1.808(b), all restrictions imposed by the depositor on the

availability to the public of the deposited material will be irrevocably removed upon granting of the patent. See MPEP 2410.01.

Rejection—35 U.S.C. §112, second paragraph

Claims 18 and 78 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite. This rejection is moot in view of the amendments above.

Provisional Rejection—Obviousness-type Double Patenting

Claims 1-8, 17-22 and 78-79 were provisionally rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-7, 14-18 and 65-66 of copending U.S. Application No. 10/590,810. The Applicants respectfully request that this provisional double patenting rejection be held in abeyance pending the identification of otherwise allowable subject matter in the present application. Upon an indication of allowability for the pending claims, the Applicants understand that the provisional double patenting rejection will be withdrawn, provided the claims in the copending application have not been allowed, MPEP 804(I)(B).

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provisional double patenting rejection will be withdrawn, provided the claims in the copending application have not been allowed, MPEP 804(I)(B).

Conclusion

In view of the amendments and remarks above, the Applicants respectfully submit that this application is in condition for allowance. An early notification of such is earnestly requested.

Respectfully submitted,

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